Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of		
Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates	)	**WC Docket No. 03-228**

MCI REPLY COMMENTS

WorldCom, Inc. d/b/a MCI (MCI) hereby submits its reply to comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.

I. The OI&M Sharing Ban Remains Necessary to Prevent Discrimination

Contrary to the RBOCs' contention, the OI&M sharing ban does not reflect a "balancing" of the costs and benefits of vertical integration that the Commission can now "revisit."[1] A careful review of the Non-Accounting Safeguards Order shows that the only discussion of "balancing" arises not with regard to the Commission's adoption of the OI&M rule, but rather in the context of whether it was appropriate to impose structural separation requirements *in addition to* the ban on sharing of OI&M functions.[2] It is clear that the Commission viewed the OI&M sharing ban as a *minimum* requirement of section 272(b)(1), compelled by a straightforward reading of the term "operate independently."[3]

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[1] See Verizon Comments at 5.
[2] Compare Implementation of the Non-Accounting Safeguards Order and Further Notice of Proposed Rulemaking, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 163 (Non-Accounting Safeguards Order) (analyzing need for OI&M rule) with ¶¶ 167-169 (analyzing need for structural separation of administrative services).
[3] Non-Accounting Safeguards Order at ¶ 163 ("We further conclude that allowing the same personnel to perform the operating, installation, and maintenance services associated with a BOC's network and the

The conclusion that the OI&M sharing ban is compelled by section 272(b)(1) was correct. As MCI explained in its initial comments, if the OI&M sharing ban were eliminated, BOC employees would be performing all of the affiliate's functions, a result that cannot be squared with any reasonable definition of the term "operate independently." Furthermore, the legislative history and the closely-related provisions of section 274 confirm that "operate independently" represents more than simply a ban on joint ownership of facilities.

Even if the Commission were to now reverse course and find that the OI&M sharing ban is not compelled by section 272(b)(1), there is nothing in the record that provides a reasoned basis for the Commission to eliminate the OI&M sharing ban. Notably, there is nothing in the record that would allow the Commission to reconsider the Non-Accounting Safeguards Order's finding that discrimination would be "inevitable" in the absence of the OI&M sharing ban.[4] That finding simply recognizes that a long distance affiliate whose operations are integrated with those of the BOC will inherently receive superior service from the BOC than an unaffiliated carrier.

Indeed, the RBOC comments inadvertently confirm that lifting the OI&M sharing will inevitably provide the BOC affiliate with superior access to the BOC's facilities. When the BOCs describe the problems that they attribute to the OI&M sharing ban, they are in fact describing problems that every long distance carrier faces when dealing with the BOCs. For example, every long distance carrier, not just the

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facilities that a section 272 affiliate owns or leases from a provider other than the BOC would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1).")

[4] Non-Accounting Safeguards Order at ¶ 163 ("Allowing a BOC to contract with the section 272 affiliate for operating, installation, and maintenance services would *inevitably* afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors." (emphasis added))

BOC affiliate, faces challenges when negotiating and coordinating with the BOCs for the installation and repair of access facilities.[5] Obviously, the elimination of those negotiation and coordination issues for the BOC affiliate alone, by eliminating the OI&M sharing ban, would an inherently discriminatory result – whereas today the BOC affiliate and unaffiliated carriers are on the same footing, only the BOC affiliate would see its access to BOC facilities improve if the OI&M sharing ban were eliminated. Notably, Verizon admits that it could address the coordination and handoff issues in a manner that would presumably benefit all long distance carriers, but has no intention of doing so.[6]

Contrary to the RBOCs' claims, nonstructural safeguards could not offset the dramatically increased risk of discrimination if the OI&M sharing ban were eliminated.

- The Non-Accounting Safeguards Order found that discrimination was "inevitable" without the OI&M sharing ban *despite* the existence of section 272(e)(1) and the other nonstructural safeguards now cited by the RBOCs.
- Experience in markets where the Commission allows integrated operation[7] is of only limited relevance to the interLATA market. As the Commission explained in the Non-Accounting Safeguards Order, the potential degree of integration between the BOC's local and long distance operations – and resulting risk of discrimination and cost misallocation – is far greater than the

[5] Verizon Comments at 18; Qwest Comments at 12; SBC Comments at 2.
[6] Verizon Comments at 18 ("The only alternative is for the BOC to spend time and money identifying a means to ensure a sufficiently rapid response notwithstanding the regulatory barriers, thus diverting funds that could be used far more productively in the market.")
[7] See, e.g., Verizon Comments at 13-14.

potential degree of integration between the BOCs' local and wireless, CPE, or manufacturing operations.[8]

- Experience with the sharing of administrative services between the BOC and its long distance affiliate[9] of is of no value in predicting whether the sharing of OI&M services would result in increased discrimination. The Commission permitted the sharing of administrative services precisely because it believed that the risk of discrimination and cost misallocation associated with the sharing of administrative services was low, i.e., did not "creat[e] the same potential for anticompetitive discrimination by the BOC in favor of its section 272 affiliate."[10]
- The Commission has found that section 272(e)(1) and other safeguards cited by the RBOCs are not alternatives to structural separation, but instead rely on structural separation in order to function effectively.[11] Structural separation ensures that the BOC affiliate interacts with the BOC on the same basis as unaffiliated carriers, facilitating comparison of the services obtained by the BOC affiliate with the services obtained by unaffiliated carriers.

Moreover, even if the Commission were to find that nonstructural safeguards could, in theory, take the place of the OI&M sharing ban, the simple fact is that adequate nonstructural safeguards do not exist at this time. In particular, the Commission has still not adopted reporting requirements to implement section 272(e)(1). Precedent, as reflected in the Computer III reporting requirements, RBOC

[8] Non-Accounting Safeguards Order at ¶ 159.
[9] See, e.g., Verizon Comments at 10-11.
[10] Third Reconsideration Order at ¶ 15.

merger order reporting requirements, and UNE metrics, confirms that nondiscrimination provisions such as section 272(e)(1) can only be enforced if (1) there is regular reporting of performance data; (2) the metrics employ well-defined business rules; and (3) the metrics permit the comparison of the performance received by unaffiliated carriers with the performance received by the incumbent or its affiliate. Because the Commission has yet to adopt such metrics for the services encompassed by section 272(e)(1), it cannot find that the requirements of section 272(e)(1) are sufficient to take the place of the OI&M sharing ban.

II. The Benefits of the OI&M Sharing Ban Outweigh the Costs

Not only does the OI&M sharing ban remain necessary to prevent discrimination, but it imposes little in the way of relevant costs on the RBOCs. As an initial matter, the RBOC cost estimates provide no basis for the Commission to find that the RBOCs have been overly burdened by the OI&M sharing ban. BellSouth admits that the RBOCs can structure their operations in a manner that avoids most, if not all, costs attributable to the OI&M sharing ban.[12] A second RBOC – SBC – provides data only on the sharing of OI&M functions between the SBC BOCs and SBC's advanced services affiliate, which is irrelevant to the issue of OI&M sharing between the BOC and its interLATA affiliate.[13] And Verizon offers up an estimate that is (1) extremely

[11] Non-Accounting Safeguards Order at ¶ 160 ("[Section 272(c)(1) and (e)] would offer little protection if a BOC and its section 272 affiliate were permitted to own transmission and switching facilities jointly.")
[12] BellSouth Comments at 12-14.
[13] SBC Comments at 2, n.5.

suspect, for the reasons that AT&T has outlined;[14] and (2) so much higher than the next-highest estimate that it must be disregarded as an outlier.

Moreover, even if Verizon's estimate of $183 million[15] in additional costs over four years (approximately $45 million per year) were accepted at face value, those costs could not be viewed as material. First, the approximately $45 million in annual costs that Verizon attributes to the OI&M sharing ban represents only slightly more than 0.1 percent of Verizon's approximately $32 billion in domestic wireline operating expenses.[16] Second, the rapid and dramatic increase in RBOC long distance market share confirms that any costs imposed by the OI&M sharing ban are not material.

There is no merit to the RBOC claim that the OI&M sharing ban provides a "market advantage" to competitors who are permitted to integrate their local and long distance operations, particularly in the enterprise market.[17] That perceived market advantage does not exist for the simple reason that the RBOCs' competitors have only limited local facilities that they can integrate with their long distance operations. Indeed, Congress adopted section 272 precisely because it recognized that the RBOCs' competitors would have only limited local facilities of their own, and would remain dependent on RBOC local facilities even after a BOC has satisfied the requirements of section 271(d)(3).[18]

Competitors remain dependent on BOC facilities even in the enterprise market. Even if MCI has its own fiber to a high-volume location such as a bank headquarters

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[14] Letter from C. Frederick Beckner III, Sidley, Austin, Brown & Wood, to Marlene H. Dortch, FCC, CC Docket No. 96-149, July 9, 2003.
[15] Verizon Comments at 20.
[16] http://investor.verizon.com/financial/quarterly/VZ/3Q2003/3Q03Bulletin.pdf at 13 (showing $8.2 billion in operating expenses for 3Q03.)
[17] Verizon Comments at 14.

building, it typically relies on BOC facilities to reach the customer's other locations, such as bank branch locations. The Commission recently confirmed in the Triennial Review Order that, in the vast majority of cases, competitors remain impaired without access to BOC loop facilities even in the enterprise market.[19]

III. Conclusion

For the reasons stated herein, the Commission should retain section 53.203(a) of its rules in its entirety.

Respectfully submitted,
WORLDCOM, INC. d/b/a MCI

/s/ Alan Buzacott

Alan Buzacott
1133 19th Street, N.W.
Washington, DC 20036
(202) 887-3204

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[18] Non-Accounting Safeguards Order at ¶¶ 9-11.
[19] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand, CC Docket No. 01-338, released August 21, 2003, at ¶¶ 298-327.